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**DECISION MEMORANDUM**  
**Rock Bizarre Mineral Materials**  
**USDA Forest Service, Northern Region**  
**Nez Perce-Clearwater National Forests**  
**Palouse Ranger District**  
**Latah County, Idaho**

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**I. Decision**

I have decided to approve Rock Bizarre Mineral Materials' (hereinafter referred to as "Rock Bizarre") proposal for removal of large pieces of rubble from a primitive road/trail on the Palouse District of the Nez-Perce-Clearwater National Forests, Latah County, Idaho with the following adjustments from the original proposal: Gathering of rubble will only occur along the Forest Service non-system road identified on the attached map. The project is located at the following legal coordinates: T42N, R4W, Section 14 (Boise Meridian).

The proposed category for this project is: 36 CFR 220.6(e)(8) *Short-term (one year or less) mineral, energy or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than one mile of low standard road or use and minor repair of existing roads.*

**Background**

Rock Bizarre has requested permission from the Forest Service to collect rubble, comprised of syenite and quartzite, which has accumulated along the sides of a small road that branches off of Forest Service Road 4766 (hereinafter referred to as "FS Road 4766") near Hoteling Creek.

This non-system road continues through the site for approximately 2,300 feet and connects to a road on adjacent Potlatch Corporation land. (This road is not on the Forest Service Travel Plan. It has a gate where the road departs from FS Road 4766 and a small bridge across Hoteling Creek. Both the gate and the bridge are privately owned.)

There is also a small, unoccupied cabin built by a former claimant on the site.

**Authority**

Forest-wide management direction in the Clearwater National Forest Plan related to this project can be found on II-30 (USDA Forest Service, 1987). Direction for minerals includes the following applicable objectives and standards:



**Objectives**

- a. Process all plans of operation and exploration permits in a timely manner and maintain close coordination with local mining groups, as well as applicable State and Federal agencies.
- b. Meet demand for mineral materials consistent with the management of other surface resources.

**Standards:**

- a. Permit all lands on the Clearwater National Forest to be available for mineral leasing unless formally withdrawn. Lease applications, permits, and licenses will be analyzed in compliance with NEPA and timely processed considering direction in this Plan, including standards identified in the management area and Appendix J.
- b. Make additional NEPA, site specific analysis of environmental effects before recommendations are made on any lease application.
- c. Recommend stipulations which are displayed in Appendix J and based upon an environmental analysis for oil and gas leasing of non-wilderness lands in accordance with management area direction in Chapter III.
- d. Base frequency of inspection of active mining claims on basis of potential risk of resource damage.
- e. Request mineral examinations under the following conditions to determine if claims are being validly held and occupied:
  - (1) The filing of a patent application;
  - (2) Suspected or documented use not authorized under the mining laws;
  - (3) A conflict with Federal use or regulation; i.e., campgrounds, RNA's, future designated wilderness.
- f. Provide common-variety minerals (including gravel pit sources) by lease, sale, or free use in accordance with the following criteria:
  - (1) Grant permits on lands covered by other mineral leases or permits only when removal will not unduly interfere with the prior authorization.
  - (2) Do not grant permits unless Forest Plan direction can be met.
- g. Develop Forest aggregate sources consistent with specific management area direction, providing for applicable site rehabilitation after use.
- h. Respond to proposed operating plans within 30 days of the receipt of such plans.



i. Provide for reasonable access for mineral prospecting, exploration, development, and production consistent with applicable management area direction.

j. Require that mitigation measures be Included in plans of operation for all mining activities, mineral related access roads and processing facilities.

## **Decision**

I have decided to approve the above project with the following terms and conditions.

- Access will be by existing roads and trails. No new road or trail construction will be required.
- No live water or wetlands will be directly affected by this proposal. An appropriate buffer of at least 20 feet will be maintained between any surface disturbance and adjacent streams or wetland areas.
- The amount of rock to be removed from the roadside will be approximately 5 tons of quartzite and approximately 20 tons of syenite.
- None of the aforementioned rock is to be dug out of the ground; all collection will be obtained "above-surface."

A standard set of mitigation measures has been developed for exploration proposals of this type and will be implemented as appropriate for this project along with any additional mitigation that is appropriate. In addition, Idaho Best Management Practices for Mining will be adhered to. A field review (which includes the operator) will be necessary before the project is initiated to identify specific sites and related issues and possible site specific mitigation measures.

With the use of a rubber-tired, 5000 lb., 30 hp. tractor, Rock Bizarre will use 4-6 workers/laborers to slide or lift syenite and quartzite boulders from the side of the road onto metal skids. (These boulders exist as rubble on the side of the road and will not be dug out of the ground.) The metal skids will be dragged to a trailer for a maximum of 1000 feet. Rock will then be winched or lifted from the skid onto a trailer for transport out on Forest Service roads. As stated above, the amount of rock to be removed from the roadside will be approximately 5 tons of quartzite and approximately 20 tons of syenite.

Workers will be employing tent camping on the project site.

This project is currently proposed for the spring and summer of 2014 and may extend through the 2015 operating season, depending on weather and timing. Duration of the operation will be one year or less.

A water permit will be obtained from the Idaho Department of Water Resources before water may be drafted from any stream located on Forest Service lands.



As part of this decision, the claimant will be required to:

**General:**

- ✓ Notify the District Ranger or minerals administrator at least 48 hours before any work is to begin.
- ✓ Wash all vehicles and equipment used at the site before being brought onto National Forest system lands to prevent the spread of noxious weeds.
- ✓ Avoid disturbance of wetlands and stream riparian zones.
- ✓ Avoid working on saturated soils.
- ✓ Prevent discharge of water into any live stream or wetland.
- ✓ Place weed free straw bales or install silt fence in places as identified by a Forest Service representative to minimize sediment migration from stockpiles and/or raw earth.
- ✓ Obtain prior approval from the Forest Service for cutting or removal of trees or other large live vegetation. Downfall may be removed as needed.
- ✓ Follow the State of Idaho Best Management Practices (BMPs) for all surface disturbing activities, reclamation, and abandonment. BMPs are outlined in the *Best Management Practices for Mining in Idaho (Idaho BMPs) (Idaho Department of Lands, et al. 1992)*.
- ✓ Report accidents or injuries to the Forest Service within 24 hours.
- ✓ Develop hazardous materials and spill prevention plan and submit it to the District Ranger prior to operations.
- ✓ Store no more than 30 gallons of fuel or oil in the project area. Store all fuel or oil in a secondary containment system that limits spills to the environment.
- ✓ Remove all equipment, garbage and trash resulting from the operation from National Forest system lands prior to October 1, the end of the regular operating season. Dispose garbage and trash at a State of Idaho approved site.
- ✓ Use and maintain a sanitary facility; e.g., porta-potty or self-contained camper, at the project area while operations are ongoing.
- ✓ Comply with all applicable Federal and State fire laws and regulations and take all reasonable measures to prevent and suppress fires on the area of operations and require employees, contractors and subcontractors to do likewise (36 CFR 228.11).

**Cultural Resources:**

- ✓ If previously undiscovered cultural resources (historic or prehistoric objects, artifacts or sites) are exposed as a result of operations, cease operations until notification is received from a Forest Service archeologist or the District Ranger that the Forest Service and the operator has complied with provisions for mitigating unforeseen impacts as required by 36 CFR 228.4(e) and 36 CFR 800.

**Design Criteria and Mitigation Measures**

This project includes design criteria identified below to protect water quality. These items are not all-inclusive, as the Forest Plan standards are incorporated by reference (USDA Forest Service 1987, as amended).



- ✓ Replant all disturbed soils as soon as possible to minimize soil erosion.
- ✓ Do not remove dead, dying or downed coarse woody debris from any RHCA.
- ✓ Where feasible, incorporate the existing woody debris and vegetation located onsite into the soil to maintain organic matter content and long-term soil productivity.
- ✓ Do not construct structures; i.e., sheds, shelters, in any wetland or floodplain within the project area.
- ✓ If existing native surface roads are used for access, reconstruct water bars on the native surface project roads prior to the end of the operating season. Follow guidelines and typical drawings, as specified.
- ✓ Do not remove, disturb or damage any in-stream fish habitat structure; e.g., log jam, rock cluster, etc. If it is necessary for prudent or safe operations to do so, notify the Forest such that the District or Forest fisheries biologist may inspect the proposed changes to fish habitat.
- ✓ Where it is necessary to maintain sanitation facilities on-site, do not locate facilities closer than 50 feet to any lake, stream, river or wetland; and have spill prevention control and countermeasures such that effluent from the facility does not reach any lake, stream, river or wetland.
- ✓ If the total oil or oil products storage at a work site exceeds 1,320 gallons or if a single container; e.g., fuel truck or trailer, exceeds a capacity of 660 gallons, the purchaser shall prepare and implement a Spill Prevention Control and Countermeasures (SPCC) Plan. The SPCC plan will meet applicable EPA requirements (40 CFR 112), including certification by a registered professional engineer. (SFP: FW-119, 120, 122).

## **II. Rationale for Decision and Reasons for Categorically Excluding the Decision**

### **A. Category of Exclusion and Rationale for Using the Category**

Based on information in this document and the project record, I have determined that no extraordinary circumstances affecting resource conditions exist (36 CFR 220.6), that this project may be categorically excluded from documentation in an EA or EIS, and that it meets all the criteria outlined for 36 CFR 220.6(e)(8) *Short-term (one year or less) mineral, energy or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than one mile of low standard road or use and minor repair of existing roads.*

The rationale for my decision is based on: 1) the proposed action fully meeting the criteria for Categorical Exclusions, 2) the proposed action meeting the purpose and need, 3) the findings related to extraordinary circumstances, discussed below, 4) the project's consistency with laws and regulations, including the Forest Plan, 5) the on-the-ground review and discussion with district resource specialists, and 6) my review of the Biological Assessments (BA), Biological Evaluations (BE), specialists' reports, and project record.

### **B. Finding of the Absence of Adverse Effects to Extraordinary Circumstances**

Based on the findings for resource conditions described below, I have determined that no extraordinary circumstances are associated with my decision. Forest Service direction at 36 CFR 220.6(b) describes the resource conditions that should be considered in



determining whether extraordinary circumstance related to the proposed action warrant further analysis and documentation in an EIS or EA.

Additionally, 36 CFR 220.6(b) states, "The mere presence of one of more of these resource conditions does not preclude use of a categorical exclusion. It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist."

**1. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat or Forest Service sensitive species:**

The Interdisciplinary Team (ID Team) Botanist, and Wildlife and Fisheries Biologists determined the proposed actions will have no effect or impact on listed or sensitive plant, wildlife or fish species or habitat, and suitable habitat will not be altered because habitat is not present in the project area, habitat is present but the species do not occur in the project area or habitat is present and the species may occur but the project will not affect the habitat for the species, and therefore no incremental effects exist that will cause a cumulative effect and no extraordinary circumstances were identified for these resources as documented in the Biological Assessments and Evaluations, and specialists' reports (see plant, wildlife, and fish sections of the project record). In pertinent part, the following comments were made by the Team:

**Fisheries:** *This project is located in the Palouse sub-basin. It involves picking up materials off an existing road fill. No effects to streams or habitat are expected.*

**Wildlife:** *Coeur d'Alene salamanders are found in springs, seeps, waterfall spray zones and stream edges. This project area contains portions of tributaries of Gold Creek and Hoteling Creek. The activities associated with this project will have similar impacts to salamanders as road maintenance with project area. This short term activity could possibly impact or kill individuals but will not impact the viability of Coeur d'Alene salamanders on the Forest.*

*Western toads can be found in a wide range of habitats from meadows to forests but they are commonly associated with wet areas. These road segments and the 400 buffers around them contain portions of tributaries of Gold Creek and Hoteling Creek. The activities associated with this project will have similar impacts to boreal toad as road maintenance with project area. This short term activity could possibly impact or kill individuals but will not impact the viability of boreal toads on the Forest.*

*There is elk habitat in the vicinity of this project area however this project area does not fall in an elk analysis unit. The use of a tractor might increase short term disturbance but will have similar impacts as current road maintenance does on elk. Current levels of activity have likely displaced individuals or animals have habituated to this activity. Short term increases in disturbance are not likely to have additional detrimental impacts to the population viability.*

*There is white-tailed deer habitat in the vicinity of this project area. The use of a tractor might increase short term disturbance but will have similar impacts as current road maintenance does on*



deer. Current levels of activity have likely displaced individuals or animals have habituated to this activity. Short term increases in disturbance are not likely to have additional detrimental impacts to the population viability.

**Plants:** While there is suitable habitat for some mesic forest sensitive plant species in the general area, this project limits disturbance to the road surface and cuts of the immediate corridor. These areas do not provide suitable habitat for any plant species of concern, thus there will be no effects.

**2. Floodplains, wetlands or municipal watersheds:** The Forest Hydrologist has determined:

Floodplains: The Project will not modify or occupy floodplains to an extent greater than already exists. As such, there will be no adverse impacts to floodplains; thereby complying with EO 11988 and FSH 1909.15, Chapter 30.3.2.

Wetlands: The Project does not propose to modify, occupy, or destroy wetlands. As such, the Project will not adversely affect wetlands; thereby complying with EO 11990 and FSH 1909.15, Chapter 30.3.2.

Municipal Watersheds: The Project area is not located within a municipal watershed. As such, the Project will not adversely affect municipal watersheds; thereby complying with FSH 1909.15, Chapter 30.3.2.

The project proposes limited ground disturbing activities (removal of cobble and boulders) within the existing road prism.

The project is within the RHCA of Hoteling Creek. However, the level of disturbance is small, the disturbance is restricted to areas that are already significantly disturbed, and site-specific BMPs were developed by the soil scientist that will reduce the likelihood of increased erosion and sediment delivery.

**3. Congressionally designated areas, such as wilderness, wilderness study areas or national recreation areas:**

The project area is not located in any congressionally designated area, and therefore, no extraordinary circumstances were identified to these resources.

**4. Inventoried Roadless areas or potential wilderness areas:**

The project is not located within any Clearwater National Forest Plan FEIS Appendix C Roadless Areas, Idaho Roadless Areas (36 CFR 294(c)) or potential wilderness areas, and therefore, no extraordinary circumstances were identified to these resources.

**5. Research Natural Areas:**

The project area is not located in any research natural area, and therefore, no extraordinary circumstances were identified to this resource.

**6. American Indians and Alaska native religious or cultural sites and**

**7. Archaeological sites or historical properties or areas:**

A cultural resources records search has been conducted for this project and no cultural resource sites have been identified within the area of potential effects. Because of previous adequate inventory or the type, location or nature of the undertaking, the Forest



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Cultural Resource Specialist has determined the project has little likelihood to adversely affect historic properties. As a result, a *No Inventory Decision* has been made that the project may proceed.

**8. Soils:** Hydrologist, Andre Snyder and Forest Soil Scientist, Cara Farr have determined:

*Activities are proposed on road segments with heavily disturbed and unproductive soils on the road prism. The current productivity and erosion potential would be maintained through mitigation measures included to prevent soil and slope failure and erosion, encourage native plant re-vegetation, and discourage weed establishment and dispersal.*

*Landtype mass stability hazards are low to medium. Landtype parent material erosion hazards are low to moderate except for 0.2 mi. segment of Rd. 4766 near Hotelling Creek crossing and the southernmost 0.1 mi. segment of Rd. 3290. Oversteepened cut and fill slopes (80-100%) have increased the instability and erosion hazards on the roadway. Mitigation measures are included to prevent slope destabilization and erosion.*

*No landslide prone areas are present. Wetlands and riparian areas are present, but proposed activities are limited to surface rock removal on existing road prism and would not affect INFISH RMOs (Riparian Management Objectives).*

*Soil quality standards apply to lands where vegetation and water resource management are the principal objectives. The standards do not apply to intensively developed sites which include mining areas and forest roads (FSM 2554.1, R1 Supplement 1999). Standards and guidelines do apply to off-site impacts of an activity and will be met with Soil and Water BMPs. Specific mitigation measures aimed at preventing cut and fill slope instability and promoting re-vegetation of bare soil surfaces will minimize the potential for soil movement and weed establishment and dispersal.*

### **Additional Notes and Analysis:**

*A site visit occurred on 12/10/2013 and proposed activities and potential effects were evaluated. Palouse ranger district civil engineer David Ratliff contributed to this report and analysis.*

### **Discussion**

*Soils are heavily disturbed on the roadway. Soil horizons have been mixed or lost through road construction, maintenance and use resulting in loss of soil fertility, OM (organic matter), soil biology, and soil physical properties. Cutslopes and fillslopes are oversteepened at 80-100% slope. Large boulders (partially or completely buried) and vegetation provide slope stability and ground cover along the roadway. The mining operator proposes removal of surface boulders and cobbles from the roadway and transport from the roadway to staging sites adjacent to road.*

### **Concerns**

*Concerns are cutslope and fillslope stabilization and re-vegetation of disturbed soils. Removal of boulders that are supporting cut and fill slopes could result in slope destabilization, slumping, erosion and road drainage and maintenance issue. Bare soil areas resulting from rock removal and skidding/transport could increase weed occurrence and and/or erosion.*

### **Specific Mitigations**

*In addition to standard BMPs (see project description form), the following mitigation measures will be used to address specific soil and roadway stability concerns. These measures will be discussed and clarified with the operator prior to activities.*



including the standards and guidelines contained in the 1987 Clearwater National Forest Plan, as amended, as required by the National Forest Management Act of 1976. My decision also complies with all Federal, state or local laws or requirements for the protection of the environment and cultural resources, as follows:

**Federal Land Policy and Management Act (FLPMA):** This action is consistent with the Federal Lands Management Policy Act because it recognizes the Nation's need for domestic sources of minerals. Additionally, design features and mitigation measures ensure compliance with this act.

**National Forest Management Act and Clearwater National Forest Plan:** This action is consistent with the Clearwater National Forest Plan (USDA Forest Service 1987), as amended, as required by the National Forest Management Act of 1976. The National Forest Management Act (hereinafter referred to as "NFMA") and accompanying regulations require that several specific findings be documented at the project level. In addition, the decision contributes to the maintenance or attainment of one or more goals, desired conditions or objectives or does not foreclose the opportunity to maintain or achieve any goals, desired condition or objectives, over the long term, is consistent with the Forest Plans' standards, and complies with applicable guidelines or is designed in a way that is as effective in achieving the purpose of the applicable guidelines, and the project activities occur in Management Areas that are specifically suitable for the intended activities or for which the plan is silent with respect to its suitability for that type of project or activity (36 CFR 219.15).

**PACFISH/INFISH Riparian Habitat Conservation Areas (RHCA's):** All activities associated with the proposed action comply with direction regarding PACFISH because no adverse effects to riparian wildlife or fish species or habitat are anticipated.

**Endangered Species Act:** A Forest Service Fish Biologist, Wildlife Biologist, and Botanist evaluated the proposed actions with regard to the Endangered Species Act as documented in the Biological Assessments, Biological Evaluations, and specialists' reports, and determined the project is consistent with the Endangered Species Act.

**Clean Air Act:** This project will comply with the provisions of the Clean Air Act, and the rules, regulations, and permit procedures of the Environmental Protection Agency (EPA) and the Idaho Department of Environmental Quality (IDEQ). No prescribed burning or other activity with the potential to significantly affect air quality is proposed.

**Clean Water Act and State Water Quality Laws:** The Interdisciplinary Team Hydrologist has determined that this project complies with the Clean Water Act and state and Federal water quality laws because it will have no notable effects to the water quality of area or downstream waters.

**National Historic Preservation Act:** The Forest Cultural Resource Specialist determined that the proposed action will have little likelihood to adversely affect cultural properties because of the type of project and its location; therefore, this project meets the Agency's responsibilities under the National Historic Preservation Act (16 USC 470), as amended, and is consistent with the *Programmatic Agreement between the Idaho State Historic*



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**Heavy equipment** – Heavy equipment (rubber tire tractor, other mechanized equipment) is limited to the road prism.

**Rock removal restricted to non-system roads** – No material will be removed from FS System Roads in the mining claim area. Rock removal is limited to non-system roads in the mining claim and operations will include the following specific mitigations to protect roadway and soil stability.

**Cutslope and fillslope stabilization** - Ensure stability of the roadway by only removing loose surface rocks within the limits of the cut and fill slope of non-system roads. Do not remove rocks that are buried and would require excavation to move or any rocks providing slope and road surface support. Disturbance of existing vegetation should also be minimized during rock removal to maintain soil support and cover.

**Weeds** – If necessary as determined by weed specialist, treat activity sites prior to and for 3-5 years post-operations to reduce weed spread into bare soil areas resulting from rock removal.

**Rehab and Revegetation** –Any depressions and surface irregularities from rock removal shall be reshaped and blended with adjacent slope to provide free draining and stable soil surface. This will support revegetation of bare soils and proper slope and roadway drainage.

Seed all bare soils areas created through operations with the following specified native seed mix and pure live seed (PLS) rate:

Species of Seed	PLS Pounds per Acre
Annual Rye	10
Idaho Fescue 'Nezpurz'	3
Blue Wild Rye	10
Mountain Brome	12
Total	35

Do not remove any boulder barricades installed to prevent resource damage through unauthorized road use, such as those installed on Rd. 73680 near north boundary of claim.

### III. Interested and Affected Agencies, organizations, and Persons Contacted

On August 16, 2013, letters providing information and seeking public comment were mailed to individuals, organizations, a variety of state and local agencies, and the Nez Perce and Coeur d'Alene Tribes. Additionally, project information has also been made available at <http://www.fs.usda.gov/nezperceclearwater> under NEPA projects. A legal notice appeared in the *Lewiston Tribune* on August 21, 2013, inviting comments for 30 days from publication. Three individuals/organizations and the Nez Perce Tribe commented during the public comment period but only two individuals representing their organizations had specific issues with this project. Their comments are addressed in Appendix A.

### IV. Findings Required by Other Laws

Based on my review of the actions associated with this project, I find that the Rock Bizarre Mineral Materials Project is consistent with applicable Federal laws and regulations,



*Preservation Officer, the Advisory Council on Historic Preservation and the Region 1 National Forests in Northern Idaho Regarding the Management of Cultural Resources.*

**Migratory Bird Treaty Act:** No substantial losses of migratory bird habitat are expected from the implementation of this proposal nor any measurable impact on Neotropical migratory bird populations as a whole; therefore, the proposed action will comply with the Migratory Bird Treaty Act.

The project complies with the U.S. Fish and Wildlife Service Director's Order #131 related to the applicability of the Migratory Bird Treaty Act to Federal agencies and requirements for permits for "take." In addition, the project complies with Executive Order 13186 because the analysis meets agency obligations as defined under the January 16, 2001 Memorandum of Understanding between the Forest Service and U.S. Fish and Wildlife Service designed to complement Executive Order 13186.

**American Indian Treaty Rights:** The Nez Perce Tribal Government Liaison and Nez Perce Tribal staff has had the opportunity to review this project and determined the proposed action will not affect Nez Perce Tribe Treaty rights or Nez Perce Tribal members' abilities to exercise those rights.

**Environmental Justice:** The proposed action will not disproportionately impact consumers, Native American Indians, women, low-income populations, other minorities or civil rights of any American Citizen in accordance with Executive Order 12898. No disproportionate impacts to minority or low-income populations were identified during scoping or the effects analysis.

**Prime Farm Land, Range Land, and Forest Land:** The proposed action complies with the Federal Regulations for prime land. The definition of "prime" forest land does not apply to lands within the National Forest System. The project area does not contain any prime range land or farm land. Federal lands will be managed with appropriate sensitivity to the effects on adjacent lands.

**Energy Requirements:** No unusual energy demands are required to implement the proposed actions.

**Other Laws or Requirements:** The proposed action is consistent with all other Federal, state or local laws or requirements for the protection of the environment and cultural resources.

#### **V. Administrative Review and Appeal Opportunities, and Implementation Date**

This decision is subject to appeal pursuant to 36 CFR 215. **A written appeal must be submitted within 45 days following the publication date of the legal notice of this decision in the *Lewiston Tribune*, Lewiston, Idaho. It is the responsibility of the appellant to ensure their appeal is received in a timely manner. The publication date of the legal notice of the decision in the newspaper of record is the exclusive means for calculating the time to file an appeal. Appellants should not rely on date or timeframe information provided by any other source.**



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Paper appeals must be submitted to:

USDA Forest Service, Northern Region    OR  
ATTN: Appeal Deciding Officer  
P.O. Box 7669  
Missoula, MT 59807

USDA Forest Service, Northern  
Region  
ATTN: Appeal Deciding Officer  
200 East Broadway  
Missoula, MT 59802

Office hours: 7:30 a.m. to 4:00 p.m. (MST).

Facsimile transmitted appeals must be submitted to: (406) 329-3411.

Electronic appeals must be submitted to: [appeals-northern-regional-office@fs.fed.us](mailto:appeals-northern-regional-office@fs.fed.us)

The subject line in the electronic appeal should contain the name of the project being appealed. An automated response will confirm your electronic appeal has been received. Electronic appeals must be submitted in MS Word, Word Perfect, Rich Text Format (RTF) or .pdf.

It is the appellant's responsibility to provide sufficient project or activity specific evidence and rationale, focusing on the decision, to show why my decision should be reversed. The appeal must be filed with the Appeal Deciding Officer in writing. At a minimum, the appeal must meet the content requirements of 36 CFR 215.14, and include the following information:

- The appellant's name and address, with a telephone number, if available;
- A signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the appeal);
- When multiple names are listed on an appeal, identification of the lead appellant and verification of the identity of the lead appellant upon request;
- The name of the project or activity for which the decision was made, the name and title of the Responsible Official, and the date of the decision;
- The regulation under which the appeal is being filed, when there is an option to appeal under either 36 CFR 215 or 36 CFR 251(c);
- Any specific change(s) in the decision that the appellant seeks and rationale for those changes;
- Any portion(s) of the decision with which the appellant disagrees, and explanation for the disagreement;
- Why the appellant believes the Responsible Official's decision failed to consider the comments; and,
- How the appellant believes the decision specifically violates law, regulation or policy.

If an appeal is received on this project, informal resolution meetings and/or conference calls may be scheduled between the Responsible Official and the appellant. These discussions will take place within **15** days after the closing date for filing an appeal. All such meetings are open to the public. If you are interested in attending any informal resolution discussions, please contact the Responsible Official or monitor the following



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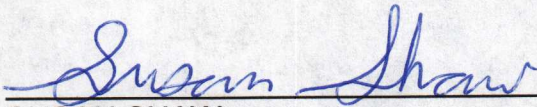
website for postings about current appeals in the Northern Region of the Forest Service:  
<http://www.fs.usda.gov/goto/r1-appeal-meetings>.

If no appeals are filed within the 45-day time period, implementation of the decision may occur on but not before, five business days from the close of the appeal filing period. When appeals are filed, implementation may occur on but not before, the 15th business day following the date of the last appeal disposition.

**VI. Contact Person**

Questions regarding this decision should be sent to Linda S. Helm, c/o Nez Perce-Clearwater National Forests, 104 Airport Road, Grangeville, ID 83530 or by telephone at (208) 935-4285 or by facsimile transmittal at (208) 935-4275 during business hours (weekdays, excluding Federal holidays, 7:30 a.m. to 4:30 p.m. PST)).

**VII. Signature of Deciding Officer**



SUSAN SHAW  
District Ranger  
Palouse Ranger District

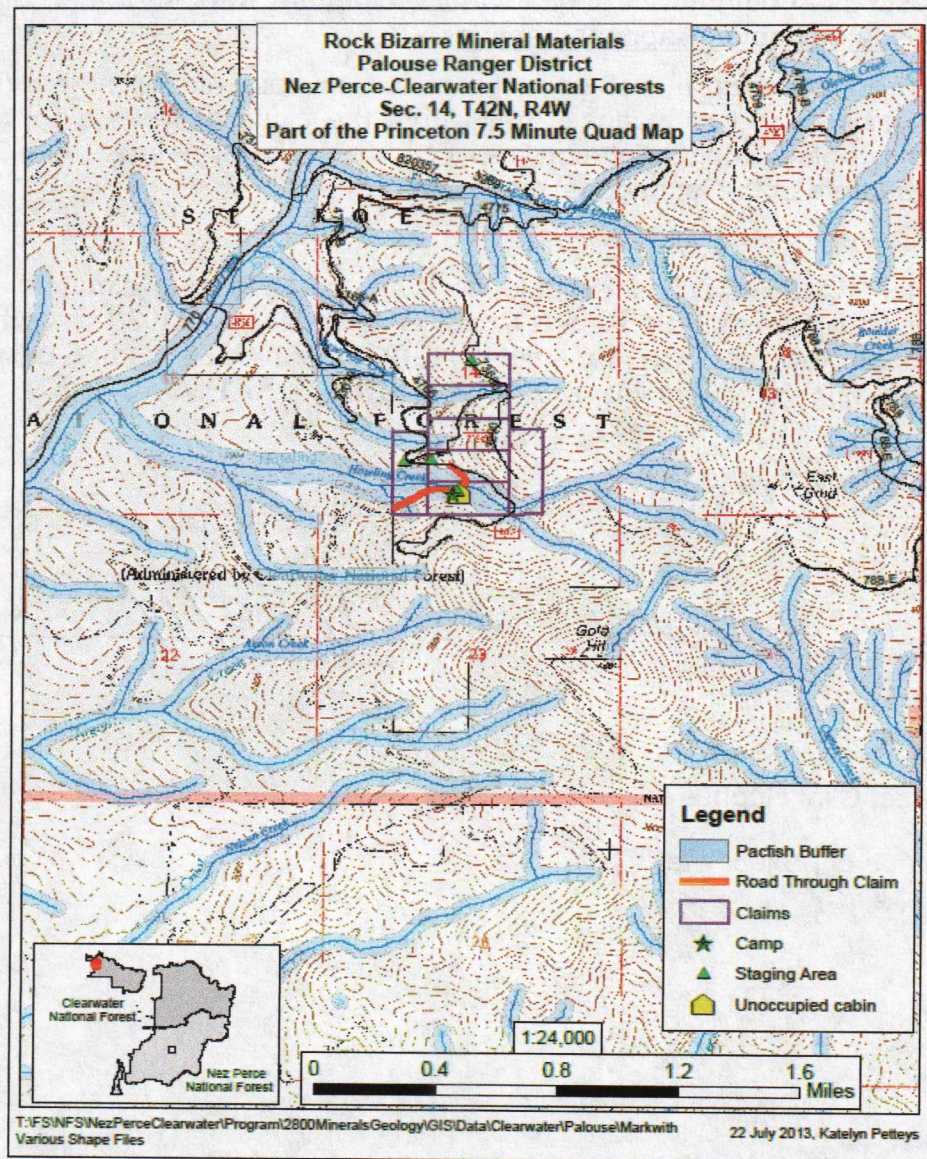
1/30/14  
Date

cc: Marty Jones, Clint Hughes

Enclosure: Maps of project site

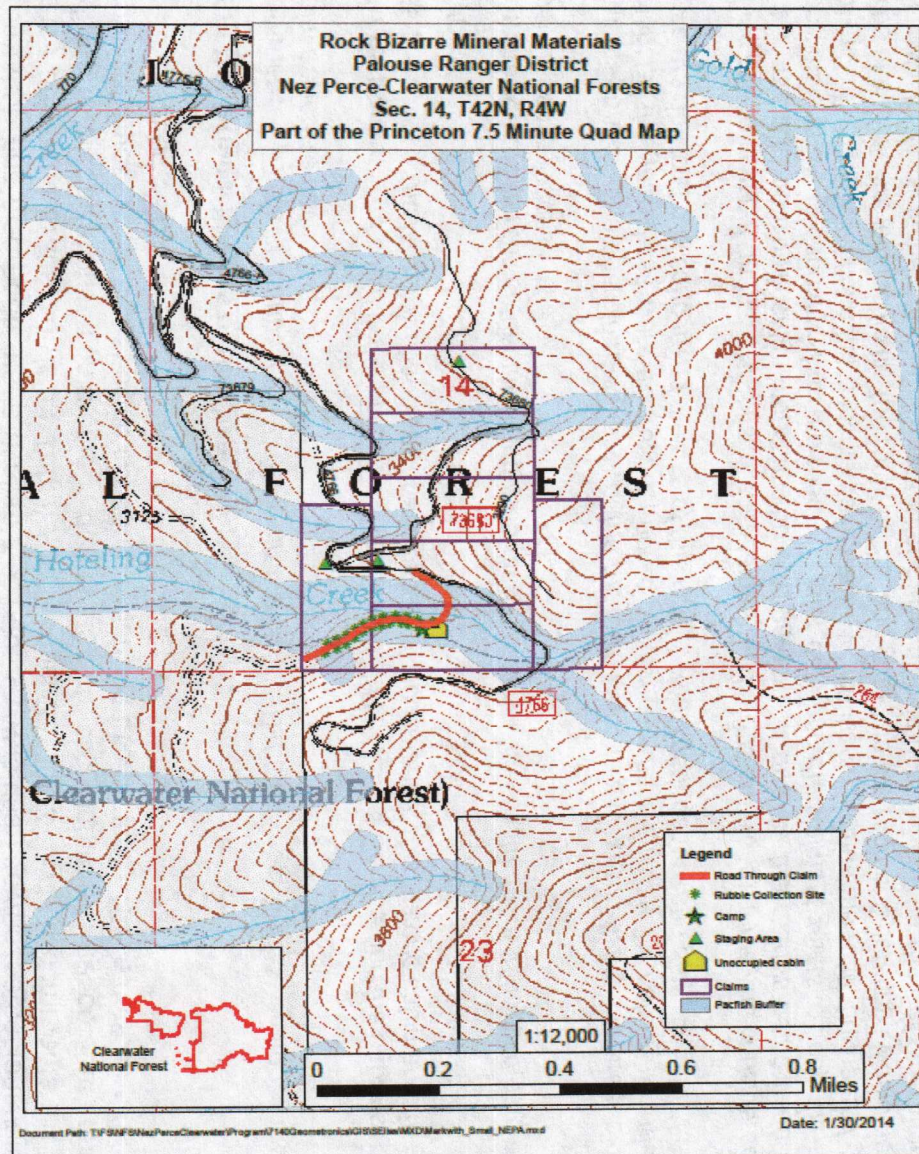


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## Appendix A

### Response to Public Comments

On August 16, 2013, letters providing information and seeking public comments were mailed to individuals and organizations, a variety of state and local agencies, and the Nez Perce and Coeur d'Alene tribes. Additionally, project information has also been made available at <http://www.fs.usda.gov/nezperceclearwater> under NEPA projects. A legal notice appeared in the *Lewiston Tribune* on August 21, 2013, inviting comments for 30 days from publication. Three individuals/organizations commented during the public comment period but only two individuals representing organization/agencies had specific concerns regarding this project. These concerns (in pertinent part) and our responses are addressed below.

#### Gary Macfarlane, Friends of the Clearwater

**Comment:** ...There is an unoccupied cabin on the claim. Did the Forest Service authorize the cabin? If not, shouldn't the current claim owners remove it?

**Our response:** The cabin is the property of the United States Forest Service and the operator does not and will not be authorized to use the cabin. The USFS Archaeologist have [sic: has] documented this historic cabin and there are no plans for the removal of the cabin.

**Comment:** ...[T]here is an unauthorized road on the national forest with an unauthorized gate and bridge. What is going to be done about those violations?

**Our response:** The operator/purchaser of the rock, who also has claims in this same area, did not build the road or bridge and did not install the gate; these were all present prior to him owning the claims and/or before his request to purchase the rock. Therefore there are no violations concerning the use of this non-system road, bridge, and gate.

Since this road is not on the USFS list of maintained roads (System Road), it may be considered for decommissioning at a later date if it is found to be significantly impacting the environment. Currently the road is being used to access three mining claims. If a decision is made to decommission the road at a later date and the claimant wants to keep the road then the claimant would need to submit a Plan of Operations (for a locatable mineral), which would include the road, bridge and gate. The level of mining would need to be of a sufficient level to justify the road, bridge and gate and the Plan of Operations would need to show how the road, bridge and gate would be reclaimed by the claimant after the mining is complete. The Plan of Operations would need to be bonded for the amount it would take to reclaim any disturbance to include the road, bridge and gate.

**Comment:** ...[T]here is no indication that this is a valid claim for materials that can be claimed under the 1978 Mining Law. A mining claim location does not give presumption of a discovery.... [Citations omitted.] Regardless, both syenite and quartzite are



## Rock Bizarre Mineral Materials Decision Memorandum

common variety minerals—constituents of granite, which are used for gravel, or fill where granite is the parent material. Thus, the issue of claim validity is important, as these don't appear to be valuable or claimable minerals.

**Our response:** A mining claim is for locatable minerals and the Forest Service is not contesting the validity of this mining claim. The mineral materials to be removed from the forest are not locatable and are considered a saleable mineral material, which requires a "Contract for the Sale of Mineral Materials" and an operating/reclamation plan. The Forest Service considers syenite and quartzite to be common variety minerals and unless they are shown to be an uncommon variety they remain a saleable mineral material. The USFS has the authority to sell common variety mineral materials from the forest. An operating/reclamation plan (which is different from a Plan of Operations for a locatable mineral) is required along with a bond since they have proposed using heavy equipment in the operation.

### Daniel Stewart, Idaho Department of Environmental Quality

**Comment:** The Rock Bizarre mineral materials are contained within water body ID17060108CL030\_02, Hoteling Creek. This water body is currently listed in Section 4C of the Idaho 2010 Integrated Report (IR) as Not Supporting salmonid spawning, cold water aquatic life and secondary contact recreation beneficial uses due to temperature, bacteria and sediment. Nor information is provided identifying proximity to live water. Should the road lay alongside Hoteling Creek, the following information will apply.

Approved best management practices that may apply to your project include; "Stream Channel Alteration Rules" IDAPA 37.03.07; and "Rules Governing Exploration and Surface Mining in Idaho," IDAPA 20.03.01. Specialized best management practices may be required to address water quality protection objectives not addressed by the above listed approved best management practices.

**Our response:** The project is within the RHCA of Hoteling Creek. The road crosses the creek via a bridge. So there is proximity to the creek; however, the level of disturbance is small, the disturbance is restricted to areas that are already significantly disturbed, and site-specific BMPs were developed by the soil scientist that will reduce the likelihood of increased erosion and sediment delivery. No streams will be altered. None of the activities will change conditions of any other parameter for which the stream is water quality limited.



